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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,245	09/17/2003	Deborah W. Cohen	BTG0011-100R/500000US3	2913
34141	7590	08/24/2007		
Pepper Hamilton LLP 500 Grant Street One Mellon Bank Center, 50th Floor Pittsburgh, PA 15219-2502			EXAMINER WEIER, ANTHONY J	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 08/24/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/667,245

Applicant(s)

COHEN, DEBORAH W.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003 and 10 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 10, 11, 13, 14, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee.

Lee discloses a method of producing a soy-based product wherein a dough is prepared by combining ingredients comprising soy bean protein (e.g. 65%; col. 3, line 33-40), pre-gelatinized starch (e.g. 15%), and water (e.g. 38% from ratio of 1.6 dry ingredients to 1 water) wherein said ingredients are combined and mixed at a temperature which effects gelatinization (e.g. 45 C; col. 7, lines 46-50) and said dough is then sheeted (broadly taken as extruded in a flat form), cut, and eventually inherently baked during a retorting step (see Example 1). Lee further discloses the presence of a leavening acid (e.g. 2% dicalcium phosphate; col. 6, lines 58-62).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-4, 10-14, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee taken together with Gluck et al.

If it shown that the retorting step disclosed in Lee is not consider to fall within the meaning of "baking", the following should be noted. Moreover, the instant claims call for the steps of baking followed by frying. However, it is notoriously well known to bake and then fry dough products to be used as pet foods. Gluck et al teaches a pet treat prepared from a process wherein a dough product is prepared and then baked and subsequently fried. It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted the steps of baking and frying (for retorting) to cover the sterilization purpose of the retort step and to have baked and fried the dough of Lee as a well known treatment means for preparing a pet food as a matter of preference.

5. Claims 5, 6, 9, 15, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee or Lee taken together with Gluck et al.

The claims further call for the inclusion of another dry ingredient as set forth in claim 5, for example, wherein same is present as less than about 30% of the dry ingredients. Lee further discloses the addition of other dry ingredients (e.g. combinations of starch sources, col. 5, lines 37-45; flavoring, col. 6, lines 63-66)) but is silent regarding the amount of said additional ingredients in view of the amounts of the primary ingredients (i.e. protein, 15% starch, water). However, such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at

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the time of the invention to have arrived at such amount of said additional ingredient as a matter of preference depending on the cost involved, availability of ingredients, nutritional considerations, strength of flavor, etc.

5. Claims 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee taken together with Buchanan et al or Lee taken together with Gluck et al and Buchanan et al.

The claims call for the inclusion of milk as the wet ingredient. However, it is notoriously well known to employ either milk or water in dough products. Additionally, Buchanan teaches the inclusion of milk as an alternative to water in preparing dough for pet foods wherein it is noted that Lee discloses preparation of a pet food. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed milk as a matter of preference of an art recognized alternative in the preparation of a dough product.

6. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee taken together with Tsumura et al or Lee taken together with Tsumura et al and Gluck et al.

The claims call for the inclusion of a milk substitute as the wet ingredient. However, soy milk is a notoriously well known milk substitute which is also well known to be used in dough products. Tsumura et al teaches the inclusion of soy milk in preparing dough products (e.g. Abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed soy milk as a matter of preference of an art recognized wet ingredient source for dough products.

***Certificate of Correction Issue***

7. A certificate of correction was issued for this patent on April 2, 2002. However, the change made to column 6, line 62 (claim 9) has not been incorporated into the specification without underlining and bracketing per MPEP 1411.01. Applicant is hereby notified that this change should be properly incorporated into the reissue application.

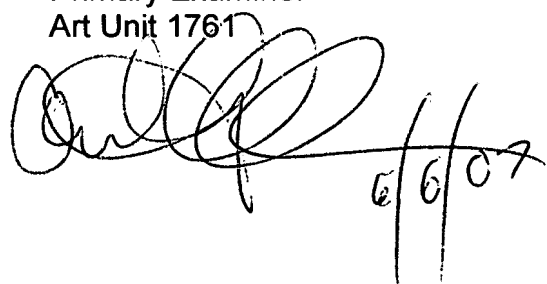
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
June 6, 2007

Anthony Weier  
Primary Examiner  
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A handwritten signature in black ink, appearing to be 'Anthony Weier', is written over the printed name. To the right of the signature, the date '6/6/07' is handwritten.